

II. FINDINGS OF FACT

2.1 Appellant Linda Nachiem is a Registered Nurse (RN) 2 and permanent employee for Respondent Department of Social and Health Services (DSHS) at Fircrest School. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on January 2, 2001.

2.2 Appellant began employment as an intermittent nurse at Fircrest School in 1992. In 1994, she was hired as a day shift permanent part-time nurse. In 1996, Respondent moved Appellant to part-time position FL 78 working the night shift, 10:30 p.m. to 7 a.m.

2.3 On September 10, 1998, Appellant's physician requested that, for health reasons, Appellant be considered for work at a different shift other than nights.

2.4 On January 28, 1999, Appellant was given a temporary appointment to full-time position FU 96 working the 2:30 p.m. to 11 p.m. shift. Appellant's temporary appointment was extended ten times. The Department of Personnel's director's designee approved each extension.

2.5 Respondent decided to fill position FU 96 on a permanent basis. Appellant's name was referred to the position as a transfer. Shirley Gilday, RN4, received the referral, reviewed Appellant's file and attendance record, and chose not to offer the position to Appellant. By letter dated December 19, 2000, Ms. Gilday informed Appellant of her decision not to consider Appellant for the position.

2.6 Effective January 5, 2001, Appellant was returned to her permanent part-time position FL 78, working the 10:30 p.m. to 7 a.m. shift.

1 2.7 On January 2, 2001, Appellant filed an appeal alleging that Respondent violated WAC 356-
2 30-067 by not giving her a permanent appointment to FU 96 after allowing her to remain in the
3 position for two years after the incumbent had vacated the position.

4 2.8 WAC 356-30-067 provides for temporary appointments from within classified service. The
5 rule states, in relevant part:
6

7 (1) Temporary appointments may be made with the approval of the director of
8 personnel or designee to classified positions during the absence of a permanent
9 employee, to reduce the effects of an impending or actual reduction in force, or
10 during a workload peak when there is a need to fill a position for not more than nine
11 months or 1560 nonovertime hours or while recruitment is being conducted to
12 establish a complete register.

13

14 (4) Established registers, certification, and referral services are available and may be
15 used when making temporary appointments. An employee certified from the register
16 to fill a position in the absence of a permanent employee may enter a probationary or
17 trial service period and subsequently gain permanent status when the permanent
18 employee does not return to the position and the agency needs to fill the position
19 permanently. The director of personnel must approve the change in status before it
20 occurs. Time served in a temporary appointment will not be counted as part of the
21 probationary or trial service period.

22 (5) Temporary appointees must meet the minimum qualifications of the class to
23 which they are appointed unless the director of personnel determines that program
24 needs demand otherwise. Upon termination of such temporary appointment,
25 permanent or probationary employees shall have the right to resume a permanent
26 position within their permanent agency at their former status except as provided in
(6) below. The employee's salary upon return will be determined as if the employee
had remained in the permanent position.

. . . .

(7) Temporary appointments made from within classified service will normally last
no more than nine months or 1560 nonovertime hours for single or multiple
appointments. An extension may be approved by the director when a temporary
appointment is made to replace a permanent employee who has been granted a leave
of absence, when temporarily filling a supervisory or managerial position when there
is reorganization pending, or as otherwise approved by the director. . . .

(Emphasis added).

III. ARGUMENTS OF THE PARTIES

3.1 Appellant argues that because she had filled FU 96 for two years, she should have gained permanent status in the position. Appellant asserts that there was nothing in her personnel file or attendance records to preclude her from being given the permanent appointment. Appellant argues that she was denied the permanent appointment in retaliation for filing a grievance in October 2000. Appellant contends that WAC 356-30-067(4) implies that as the temporary appointee, she should have gained permanent status in position FU 96 because the permanent employee did not return to the position and the agency needed to fill the position permanently.

3.2 Respondent argues that the agency complied with the provisions of WAC 356-30-067 and contends that the rule does not mandate that a permanent employee filling a temporary position must be appointed to a position if the position is filled on a permanent basis. Respondent asserts that Appellant was a permanent employee when she was appointed to the temporary position and therefore the provisions of WAC 356-30-067(4) do not apply. Respondent further asserts that at the conclusion of Appellant's temporary appointment, she was returned to her permanent position as required by WAC 356-30-067(5). Respondent also asserts that Appellant's temporary appointment was extended in compliance with the provisions of WAC 356-30-067(7). Respondent argues that the agency did not violate WAC 356-30-067 and the appeal should be denied.

IV. CONCLUSIONS OF LAW

4.1 Primary jurisdiction for matters arising under Chapter 356-42 WAC governing labor relations and collective bargaining agreements, including grievances, lies with the Washington State Personnel Resources Board. However, the Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein under the provisions of RCW 41.06.170(2) which provides any employee who is adversely affected by a violation of the state civil service laws or rules the right to appeal to this Board.

1 4.2 Furthermore, as provided in WAC 356-46-020, allegations of discrimination are within the
2 jurisdiction of the Washington State Human Rights Commission, not the Personnel Appeals Board.
3

4 4.3 The narrow issue before the Board is whether Respondent violated WAC 356-30-067. In an
5 appeal of an alleged rule violation, Appellant has the burden of proof. WAC 358-30-170
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7 4.4 Appellant has failed to prove that Respondent violated WAC 356-30-067. Respondent
8 complied with the rule by appointing Appellant, as a permanent employee, to a temporary
9 appointment, by seeking the director's approval for all subsequent extensions of her temporary
10 appointment and by returning her to her former permanent position at the conclusion of her
11 temporary appointment. Regardless of the length of Appellant's temporary appointment, the rule
12 does not require or imply that she be considered for or appointed to the position on a permanent
13 basis.

14 4.5 Appellant's appeal should be denied.
15

16 **V. ORDER**

17 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Linda Nachiem is denied.

18 DATED this _____ day of _____ 2001.
19

20 WASHINGTON STATE PERSONNEL APPEALS BOARD

21 _____
Gerald L. Morgen, Vice Chair

22 _____
23 Leana D. Lamb, Member
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